IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES
Appeal: Ex Parte Wilfred Jud And Hans-Rudolf Nageli
Docket No.: ATM-2244

Appeal No.	:	2006-1061
Appellants	:	Wilfried JUD et al.
Serial No.	:	09/505,713
Filed	:	February 17, 2000
Title	:	STERILIZIBLE COMPOSITE FILM

REQUEST FOR REVERSAL OF REHEARING DECISION

Mail Stop Appeal Brief -Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir or Madame:

Appellants hereby request reversal of the DECISION ON REQUEST FOR REHEARING of January 30, 2007 of the expanded panel of the Board Of Appeals and allowance of the subject patent application.

The rehearing decision did not address and decide the issues of which appellants asked reconsideration, or address the failure of the original decision and the rehearing decision to comply with the requirements of the Supreme Court's Graham decision as required by Patent Office policy.

The Graham decision states:

> "Under § 103, ...;...; and the level of ordinary skill in the pertinent art resolved."

The language used by the Supreme Court is mandatory and is not merely permissive.

The policy of the Patent Office is that the Patent Office "is to follow *Graham v. John*

Deere Co. in the consideration and determination of obviousness under 35 U.S.C. 103." Hence, the Patent Office policy requires that the level of ordinary skill in the pertinent art be resolved.

Appellants note that the subject two decisions of the Board Of Appeals went into detail on what can be used in resolving the ordinary level of skill in the pertinent art. However, the evidence that can be used in making such resolution is not the same as actually making such mandatory resolution. Nowhere has the Board Of Appeals or the Examiner resolved the level of ordinary skill in the record. Rule 1.2 requires that the action of the Patent Office will be based exclusively on the written record in the Patent Office. Appellants have been denied their right to rebut the Patent Office's resolution of the ordinary level of skill in the pertinent art because any such resolution by the Patent Office does not exist in the record.

Note that Section C, "*Was the level of skill actually determined?",* in the Rehearing Decision only recites and regards "the level of skill in the art" which has nothing to do with Section 103(a). The requirement of Section 103(a) and the Graham decision is "ordinary skill" and "level of ordinary skill", respectively.

Reversal as requested is respectfully sought.

Respectfully submitted,

April 2, 2007
Date

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